

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D33484
G/kmb

_____AD3d_____

Submitted - December 5, 2011

PETER B. SKELOS, J.P.
ARIEL E. BELEN
PLUMMER E. LOTT
JEFFREY A. COHEN, JJ.

2010-05659

DECISION & ORDER ON MOTION

The People, etc., respondent,
v Hasheem Foster, appellant.

(Ind. No. 1742/09)

Alan Katz, Garden City, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Laurie K. Gibbons of counsel;
Lisa A. Schwartz on the brief), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Grella, J.), rendered May 4, 2010, convicting him of robbery in the first degree, robbery in the second degree (three counts), criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree, and criminal use of a firearm in the first degree, upon his plea of guilty, and imposing sentence. Assigned counsel has submitted a brief in accordance with *Anders v California* (386 US 738), in which he moves for leave to withdraw as counsel for the appellant.

ORDERED that the motion of Alan Katz for leave to withdraw as counsel is granted, and he is directed to turn over all papers in his possession to new counsel assigned herein; and it is further,

ORDERED that Marianne Karas, P.O. Box 277, Armonk, New York, 10504, is assigned as counsel to perfect the appeal from the judgment of conviction rendered May 4, 2010; and it is further,

ORDERED that new counsel shall serve and file a brief on behalf of the appellant

December 27, 2011

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within 90 days of the date of this decision and order on motion and the respondent shall serve and file its brief within 30 days after the brief on behalf of the appellant is served and filed. By prior decision and order on motion of this Court dated November 5, 2010, the appellant was granted leave to prosecute the appeal as a poor person, with the appeal to be heard on the original papers (including a certified transcript of the proceedings) and on the briefs of the parties, who were directed to file nine copies of their respective briefs and to serve one copy on each other.

In the brief submitted on behalf of the defendant, assigned counsel “merely recite[s] the underlying facts, and state[s] a bare conclusion that, after reviewing the record . . . , it is [counsel’s] opinion that there are no nonfrivolous issues to be raised on appeal” (*Matter of Giovanni S. [Jasmin A.]*, _____AD3d_____, 2011 NY Slip Op 07846, *3 [2d Dept 2011]). As such, the brief does not demonstrate that assigned counsel acted “as an active advocate on behalf of his . . . client” (*id.* at *2 [internal quotation marks omitted]; see *People v Stokes*, 95 NY2d 633, 636; *People v Saunders*, 52 AD2d 833). Accordingly, we must assign new counsel to represent the appellant (see *Matter of Giovanni S. [Jasmin A.]*, _____AD3d_____, 2011 NY Slip Op 07846, at *3 [2d Dept 2011]). In any event, upon this Court’s independent review of the record, we conclude that potentially nonfrivolous issues exist with respect to, inter alia, the admissibility of the defendant’s statements to the police (see *People v Anderson*, 42 NY2d 35).

SKELOS, J.P., BELEN, LOTT and COHEN, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court